

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003800

01/26/2015

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT

C. Keller

Deputy

CHARLES RODRICK, et al.

BARRY W ROREX

v.

DAVID MICHAEL ELLIS, et al.

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RULING

The court has received an Application Ex Parte for Order to Show Cause and Application for Temporary and Permanent Injunction, both of which were filed on behalf of defendant-counterclaimant David Ellis. As explained below, neither submission is supported by applicable law. That said, it should be understood that the rulings here in no way reflect the court's opinion, one way or the other, about the propriety of Rodrick's alleged conduct or whether it would support a new lawsuit against him.

This case was tried to a jury in May, 2014. As relevant here, the jury returned a verdict in favor of Ellis and against plaintiff-counterdefendant Charles Rodrick, awarding Ellis both compensatory and punitive damages. A final judgment was entered in Ellis' favor on September 18, 2014. Neither Ellis nor Rodrick has taken an appeal from that judgment.

The Show Cause Application would have Rodrick held in contempt for violating court orders entered before the May trial (i.e., court orders entered on May 10, 2013, and March 26, 2014). The conduct that is said to have violated those orders was discovered six months after the trial and two months after the entry of final judgment (i.e., in November, 2014). [See Application for Injunction at 4; Ellis Declaration at 1-2, para. 6] That conduct also is the basis for the requested temporary and permanent injunctions.

The two court orders that were purportedly violated are not, as the Show Cause Application maintains (at 2-3) "standing Order[s]." Instead, they were interlocutory orders. *Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 515, ¶8, 1 P.3d 155, 158 (App. 2000) (defining an interlocutory order as one preparatory to the final decision in the case, "contemplat[ing] further proceedings that will determine the ultimate outcome of the case"). Except in unusual circumstances not applicable here, interlocutory orders are not appealable immediately. *E.g.*, *State ex rel. Dep't of Econ. Sec. v. Powers*, 184 Ariz. 235, 236, 908 P.2d 49, 50 (App. 1995) (recognizing that appellate courts have "no jurisdiction to hear a direct appeal from an interlocutory order"). So that, if warranted, they can be appealed at some time, interlocutory orders are treated as merged into the final judgment that is entered in a case. *E.g.*, *Dowling v. Stapley*, 221 Ariz. 251, 263 n.12, ¶36, 211 P.3d 1235, 1247 n.12 (App. 2009) ("[A]ppeal from the final judgment would include appeals from otherwise nonappealable interlocutory orders"). But, although they are merged for purposes of appeal (and here, no one has appealed those orders), they are not merged for purposes of enforceability. *Bank of Am., N.A. v. Stanley*, 728 F.Supp.2d 883, 892 (S.D. Tex. 2010) (stating that "there is a difference between whether an interlocutory order is reviewable on appeal and whether it remains an enforceable order after final judgment" and concluding that interlocutory orders are "made irrelevant by the final judgment"). As such, once the final judgment is entered, interlocutory orders have no force unless the court takes action to keep them in effect. *See id.* Therefore, any conduct in which Rodrick may have engaged after September 18 did not violate either the May 10, 2013, or March

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26, 2014, orders because both of them ceased to have any effect once the final judgment was entered in Ellis' favor.¹

The Injunction Application comes after this case concluded (except, as necessary, in regard to post-judgment collection of the damages awards). If the facts on which the request for injunctive relief did not exist before the trial, they do not qualify as newly discovered evidence. *Wendling v. Southwest Sav. & Loan Ass'n*, 143 Ariz. 599, 602, 694 P.2d 1213, 1216 (App. 1984) (recognizing that "newly discovered evidence must have been in existence at the time of the trial"); *accord Boatman v. Samaritan Health Servs., Inc.*, 168 Ariz. 207, 212, 812 P.2d 1025, 1030 (App. 1991). Moreover, the doctrines of claim or issue preclusion may preclude claims based on facts that did exist before the trial, but in any event, those facts cannot be considered newly discovered evidence until the dubious is demonstrated, i.e., despite the exercise of due diligence, Ellis could not have known about what appeared on a public Internet site, the existence of which he was not only aware, but from which evidence was obtained and presented to the jury on his behalf. *Wendling*, 143 Ariz. at 602, 694 P.2d at 1216; *see also Boatman*, 168 Ariz. at 212, 812 P.2d at 1030 (same). It appears from what was submitted on Ellis' behalf that much of the allegedly improper conduct could not have occurred until after the trial. Whether that is true of each separate incident reflected in Ellis' submission need not be decided here.

Further, the record in this case includes no complaint, counterclaim, or other pleading by which Ellis requests an injunction against Rodrick. And, absent a properly-filed complaint, a court lacks power to issue injunctive relief. *See, e.g., Alabama v. United States Army Corps of Eng'rs*, 424 F.3d 1117, 1134 (11th Cir. 2005) ("injunctive relief must relate in some fashion to the relief requested in the complaint"); *Adair v. England*, 193 F.Supp.2d 196, 200 (D.D.C. 2002) ("When no complaint is filed, the court lacks jurisdiction to entertain the plaintiff's motion for [preliminary] injunctive relief."); *P.K. Family Rest. v. IRS*, 535 F. Supp. 1223, 1224 (N.D. Ohio 1982) (denying request for temporary restraining order because "[a]bsent a complaint, this Court lacks jurisdiction to entertain plaintiff's petition for injunctive relief").²

IT IS ORDERED:

1. The Application Ex Parte for Order to Show Cause is denied.
2. The Application for Temporary and Permanent Injunction is denied.

¹ The proposed form of judgment submitted on Ellis' behalf, which the court adopted without any change, was unaccompanied by a request to keep any interlocutory order in force.

² The request for injunctive relief is governed by Ariz. R. Civ. P. 65, and in general, Arizona courts may rely for guidance on federal court decisions when interpreting state rules that are patterned after federal rules. *Hedlund v. Ford Mktg. Co.*, 129 Ariz. 176, 178, 629 P.2d 1012, 1014 (App. 1981); *Nesbitt v. Nesbitt*, 1 Ariz. App. 293, 296, 402 P.2d 228, 231 (1965).